

1 KAREN MORRIS
General Counsel
2 DANIEL S. LIEBMAN
Deputy General Counsel
3 KENNETH J. COOPER
Assistant General Counsel
4 MARK R. SNYDER (CA 109430)
Attorney
5 PENSION BENEFIT GUARANTY CORPORATION
445 12th St SW,
6 Washington, D.C. 20024-2101
Tel.: (202) 229-3423
7 Fax: (202) 326-4112
Email: snyder.mark@pbgc.gov and
8 efilepbgc.gov;

9 *Attorneys for Pension Benefit Guaranty Corporation*

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**
13

14
15 Pension Benefit Guaranty Corporation,
16 as statutory trustee of the Sears Holdings Pension
Plan,

17 Plaintiff,

18 v.

19 Hancock County Savings Bank, F.S.B., Rebecca
20 Lamp,

21 Defendants.
22

ELECTRONICALLY
FILED
9/20/2022
U.S. DISTRICT COURT
Northern District of WV

COMPLAINT

CIVIL ACTION NO.

5:22-cv-231 (Bailey)

23
24 **INTRODUCTION**
25

26 1. Plaintiff Pension Benefit Guaranty Corporation (“PBGC”), as statutory
27 trustee of the Sears Holdings Pension Plan (the “Plan”), brings this action on behalf of
28

1 the Plan under Title IV of the Employee Retirement Income Security Act of 1974
2 (“ERISA”), *as amended*, 29 U.S.C. §§ 1301-1461 (2018). PBGC seeks to recover
3 \$15,235.81 held in the account of Defendant Rebecca Lamp (“Lamp”) at a branch of
4 Defendant Hancock County Savings Bank, F.S.B. (“HCSB”). Lamp wrongfully
5 endorsed a check payable to a deceased participant of the Plan and deposited the
6 money into her account. Under ERISA and the terms of the Plan, the money belongs to
7 the Plan because the participant died before the check was issued.
8
9

10 JURISDICTION & VENUE

11
12 2. The United States District Court for the Northern District of West
13 Virginia (the “Court”) has jurisdiction over this action, without regard to the amount in
14 controversy, pursuant to 29 U.S.C. § 1303(e)(3).
15

16 3. Venue properly lies in this Court under 29 U.S.C. § 1303(e)(2) because
17 the Defendants reside in this district, and the acts giving rise to the claims took
18 place in this district.
19

20 PARTIES

21
22 4. PBGC is a wholly-owned United States government corporation and
23 an agency of the United States established to administer and enforce the defined
24 benefit pension plan termination insurance program under Title IV of ERISA. 29
25 U.S.C. § 1302(a). Subject to statutory limits, PBGC guarantees the payment of
26 certain pension benefits upon the termination of pension plans covered by Title IV
27 of ERISA. 29 U.S.C. §§ 1321, 1322, 1361.
28

1 5. When an underfunded pension plan terminates, PBGC usually
2 becomes the statutory trustee of the plan and pays benefits to participants and
3 beneficiaries, up to statutory limits. 29 U.S.C. §§ 1321-1322, 1342, 1361. In that
4 capacity, PBGC has the power to “collect for the plan any amounts due to the
5 plan,” and to “commence, prosecute, or defend on behalf of the plan any suit or
6 proceeding involving the plan.” 29 U.S.C. §1342(d)(1)(B)(ii), (iv).
7

8
9 6. Defendant Lamp is a natural person. Upon information and belief, she
10 resides in New Cumberland, West Virginia.
11

12 7. Defendant HCSB is a federally chartered mutual savings bank with its
13 main office located in Chester, West Virginia.
14

15 **FACTS**

16 **The Pension Plan**

17 8. The Plan was established effective January 1, 1944, by Sears Holdings
18 Corporation. On January 30, 2008, the Kmart Corporation Employee Pension Plan
19 (sponsored by Kmart Holding Corporation) was merged with and into the Plan. The
20 Plan was then amended and restated, effective January 30, 2008.
21

22 9. At all relevant times, the Plan was a defined benefit pension plan covered
23 by Title IV of ERISA. *See* 29 U.S.C. § 1321.
24

25 10. The Plan was terminated and PBGC was appointed statutory trustee of
26 the Plan pursuant to 29 U.S.C. § 1342(c), by an agreement dated February 11,
27 2019, between PBGC and Sears Holdings Corporation, as the Plan administrator.
28

1 The agreement established January 31, 2019, as the Plan's termination date under
2 29 U.S.C. § 1348.

3 4 **Issuance of Check**

5 11. Randy Summers ("Summers") was employed by Kmart Corporation
6 beginning on October 28, 1980, and he terminated employment on November 30,
7 1995. During that time, he accrued a pension benefit under the Plan.

9 12. On or about October 2, 2012, Summers applied for his pension benefit
10 in the form of a lump sum. He listed his marital status as "divorced or widowed."
11 Summers died on October 14, 2012, before receiving a benefit payment. A copy of
12 Summers' death certificate is attached as Exhibit 1.

14 13. As discussed below, Summers' right to receive any benefit under the Plan
15 ceased as of the date of death pursuant to § 7.5(d) of the Plan document.

17 14. Unaware of his death, the Plan mistakenly sent Summers a benefit check
18 dated January 31, 2013, in the amount of \$15,235.81 (the "Check"). A copy of the
19 Check is attached as Exhibit 2.

21 **Wrongful Endorsement and Deposit of Check**

22 15. Lamp wrongfully endorsed the Check by signing Summers' name. On
23 March 4, 2013, she deposited the Check into her account at HCSB (the "Account").
24 Shortly after the Check was deposited, HCSB received a letter informing it that
25 Lamp had forged Summers' signature. HCSB then froze the Account.
26

27
28 16. In January 2017, the Plan discovered that it had made the erroneous

1 payment. The Plan then attempted to recover the money from HCSB.

2 17. HCSB refused to relinquish the funds to the Plan without a judgment
3
4 declaring that the Plan is entitled to the money.

5 18. After the Plan was terminated and PBGC was appointed as the trustee,
6
7 the Plan's former administrator informed PBGC that the Plan had erroneously
8 issued the Check.

9 19. PBGC sent a letter dated July 7, 2022, to HCSB demanding that it pay
10
11 the \$15,235.81 held in the Account to PBGC within 30 days. The letter was
12 delivered by FedEx on July 8, 2022, but HCSB has not responded.

13 **Plan Terms Concerning Deceased Participants**

14 20. Section 7.5(d) of the Plan document, which applies to both Sears and
15
16 Kmart participants, states that "if a Participant dies before his or her Annuity
17 Starting Date, no benefits will be payable to any person under the Plan, except [for
18 certain death benefits]." A copy of § 7.5(d) and other relevant provisions in the
19 Plan document are attached as Exhibit 3.

20
21 21. Article VI of the Plan states: "the only Death Benefits payable under the
22 Plan are the Surviving Spouse Death Benefit." Because Summers was not married
23 at the time that he applied for his pension benefit, no death benefits were payable
24 under the Plan.
25

26 22. The term Annuity Starting Date is defined in § 2.4 of the Plan
27 document as the "first day of the first period as of which payment of a Participant's
28

1 Retirement Income or Deferred Vested Income is paid as an annuity or in any other
2 form.” Summers’ benefit application states that the benefit will be “calculated
3 using a Payment Date of December 1, 2012.” That Payment Date was Summers’
4 Annuity Starting Date under the terms of the Plan.
5

6 23. Summers died on October 14, 2012, which was before the Annuity
7 Starting Date. As a result, Summers’ right to receive a benefit under the Plan
8 ceased before the Check was issued. Accordingly, Summers was not entitled to the
9 funds because he died before he was eligible to receive the payment.
10

11 24. Thus, the Plan issued the Check in error and the funds now held in the
12 Account belong to the Plan regardless of who endorsed the Check or deposited it
13 into the Account. As the statutory trustee of the terminated Plan, PBGC has the
14 right to recover the funds. *See* 29 U.S.C. § 1342(d)(1)(B).
15
16

17 **Count I: Declaratory Relief**

18 25. PBGC repeats and realleges each and every allegation in the foregoing
19 paragraphs of this Complaint.
20

21 26. Under the terms of the Plan, Summers was not entitled to receive a
22 benefit and the Check was erroneously issued to Summers.
23

24 27. The check was wrongfully endorsed by Lamp and deposited into the
25 Account.
26

27 28. The Plan is the only party that has a legal right to the \$15,235.81 held
28 in the Account, and PBGC is authorized to collect the money on behalf of the Plan.

1
2 29. HCSB refuses to release the money to the Plan because Lamp, as the
3
4 account holder, has not authorized the release.

5 30. Accordingly, there is an actual controversy over the ownership of the
6
7 money in the Account.

8 31. To resolve the controversy, PBGC requests a declaration from the
9
10 Court that \$15,235.81 in the Account belongs to the Plan.

11 **Count II: Unjust Enrichment**

12 32. PBGC repeats and realleges each and every allegation in the foregoing
13
14 paragraphs of this Complaint.

15 33. The Plan erroneously issued the Check for \$15,235.81. Lamp
16
17 wrongfully endorsed the Check and deposited it in her account at HCSB

18 34. Because the Check was issued erroneously, neither Lamp nor HCSB
19
20 is entitled to the funds and the money belongs to the Plan.

21 35. When the Check was deposited, the benefit of the money was
22
23 conferred upon Lamp and HCSB at the Plan's expense.

24 36. Lamp and HCSB knew and appreciated that they had the benefit
25
26 because the money was and still is in Lamp's account at HCSB.

27 37. The acceptance and retention by Lamp and HCSB of the money under
28
such circumstances make it inequitable for them to retain the benefit without
payment of its value.

38. By refusing to release the money to the Plan, HCSB is being unjustly enriched and should be ordered to pay the \$15,235.81 held in the Account to PBGC as trustee of the Plan.

PRAYER FOR RELIEF

WHEREFORE, PBGC, as statutory trustee of the Plan, requests that the Court:

- (1) Declare that \$15,235.81 held in the account of Rebecca Lamp at Hancock County Savings Bank, F.S.B. belongs to the Plan; and
- (2) Order Hancock County Savings Bank, F.S.B. to pay \$15,235.81 from the account of Rebecca Lamp to PBGC as the statutory trustee of the Plan; and
- (3) Grant such further relief as the Court deems just and proper.

Dated: September 20, 2022

Respectfully Submitted,

Local Counsel:

/s/ Stephanie K. Savino
STEPHANIE SAVINO (WV 13684)
Assistant U.S. Attorney
United States Attorney's Office
Northern District of
West Virginia
1125 Chapline Street
Suite 3000
P.O. Box 591
Wheeling, WV 26003
Tel: (304) 234-7706

s/ Mark R. Snyder

KAREN MORRIS
General Counsel
DANIEL S. LIEBMAN
Deputy General Counsel
KENNETH J. COOPER
Assistant General Counsel
MARK R. SNYDER
Attorney
PENSION BENEFIT
GUARANTY CORPORATION
Office of the General Counsel
445 12th St SW,
Washington, D.C. 20024-2101

1 Fax: (304) 234-0110
2 Stephanie.K.Savino@usdoj.gov

Tel.: (202) 229-3423
Fax: (202) 326-4122
Emails: snyder.mark@pbgc.gov and
efile@pbgc.gov

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5 *Attorneys for Pension Benefit Guaranty*
6 *Corporation*
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